
HOUSE BILL No. 1926

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-6-8.

Synopsis: Insurance guaranty association. Amends the guaranty association law to provide for selection of members of the board of directors by the commissioner of the department of insurance. Adds one member to the association's board of directors. Increases liability limits on association covered claims. Requires the association to determine fraud or neglect in certain settlements, releases, and judgments.

Effective: July 1, 2003.

Ulmer

January 23, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1926

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-6-8-6, AS AMENDED BY P.L.268-1999,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 6. (a) The board of directors of the association
4 shall consist of **ten (10) members, including:**

5 **(1) one (1) member, selected by the commissioner, who is not**
6 **employed by an insurer; and**

7 **(2) nine (9) member insurers, one (1) of whom shall be selected**
8 **by ~~or the commissioner~~ from among each of the following**
9 **groups representative of member insurers: ~~such selection to be~~**
10 **subject to the approval of the commissioner**

11 **(~~1~~) (A) One (1) person representing the American Insurance**
12 **Association.**

13 **(~~2~~) (B) One (1) person representing the Alliance of American**
14 **Insurers.**

15 **(~~3~~) (C) One (1) person representing the National Association**
16 **of Independent Insurers.**

17 **(~~4~~) (D) One (1) person representing the National Association**



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of Mutual Insurance Companies.

~~(5)~~ **(E)** One (1) person representing the Insurance Institute of Indiana.

~~(6)~~ **(F)** Three (3) persons representing the:

~~(A)~~ **(i)** domestic stock companies;

~~(B)~~ **(ii)** domestic mutual companies; or

~~(C)~~ **(iii)** domestic reciprocal insurers;

with not more than two (2) persons representing any category.

~~(7)~~ **(G)** One (1) person representing independent unaffiliated stock, fire, and casualty companies. ~~to be appointed by the commissioner.~~

(b) Not more than one (1) member insurer in a group of insurers under the same management or ownership shall serve as a director at the same time.

(c) Directors shall serve such terms as shall be established in the plan of operation.

(d) Vacancies on the board shall be filled for the remaining period of the term in the same manner as the initial selection.

(e) If no directors are selected by March 1, 1972, the commissioner may appoint the initial members of the board of directors.

(f) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(g) Directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

SECTION 2. IC 27-6-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) The association shall:

(i) Be obligated to the extent of the covered claims as defined herein existing at the time of the order of liquidation or arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determination. This obligation shall include only that amount of each covered claim which is less than ~~one~~ **three** hundred thousand dollars ~~(\$100,000)~~ **(\$300,000)**. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the applicable limits provided in the policy from which the claim arises, nor shall the association be obligated in an amount in excess of ~~three hundred thousand~~ **one million** dollars ~~(\$300,000)~~ **(\$1,000,000)** per policy for all claims arising out of one (1) occurrence. The return of unearned premium is limited to the lesser of: eighty percent (80%) of the paid but unearned premium; or six hundred



fifty dollars (\$650) multiplied by the number of months or partial months remaining in the policy term, not to exceed twelve (12) months.

(1) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, except claims under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the amount for which the association shall be obligated shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of the claimant's inability to work and earn wages or salary or their equivalent that would otherwise have been earned in the normal course of such injured claimant's employment, to which may be added at the discretion of the association a sum not to exceed one thousand dollars (\$1,000) for all other costs and expenses incurred by the claimant prior to the insolvency. In the case of a claim for wrongful death, the foregoing obligation of the association shall, in addition to the limits set forth above, be subject to the limitations provided by the wrongful death statutes of the state. Such amounts which are legally payable because of the death of a claimant shall be paid to the claimant's estate, to the claimant's father or mother or guardian, to the surviving spouse or children, or to the next of kin as set out in IC 34-23-1 and IC 34-23-2.

The amount for which the association shall be obligated may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself had he not been injured.

In the case of claims arising from bodily injury, sickness, or disease, including those in which death results, under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the association is obligated only to the extent provided under IC 22-3.

(2) A third party having a covered claim against any insured of an insolvent member insurer may file such claim in the liquidation proceeding under IC 27-9-3 if such insolvent member insurer is a domestic insurer and pursuant to the applicable provisions of law of the state of domicile if such insolvent member insurer is not a domestic insurer. The liquidator shall immediately refer said claim to the association to process as provided in this chapter unless the claimant shall within thirty (30) days from the date of filing said claim in the liquidation proceeding, file with the commissioner as liquidator a

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1 written demand that said claim be processed in liquidation proceedings
2 as a claim not covered by this chapter.

3 (ii) Be deemed the insurer to the extent of its obligation on the
4 covered claims as limited by this chapter and to this extent shall have
5 all rights, duties, and obligations of the insolvent insurer as if the
6 insurer had not become insolvent, including those relating to
7 reinsurance contracts and treaties entered into by the insolvent insurer.
8 However, the association's obligation to defend any insured of the
9 insolvent insurer or to indemnify against the costs of such defense
10 terminates as soon as the claimant or claimants have been paid all
11 benefits that they are entitled to under this chapter.

12 (iii) Allocate claims paid and expenses incurred among the three (3)
13 accounts separately, and assess member insurers separately for each
14 account amounts necessary to pay the obligation of the association
15 under paragraph (i) of this subsection subsequent to an insolvency, the
16 expenses of handling covered claims subsequent to an insolvency, the
17 cost of examination under IC 27-6-8-12 and other expenses authorized
18 by this chapter. The assessments of each member insurer shall be on a
19 uniform percentage basis in the proportion that the net direct written
20 premiums in this state of the member insurer for the preceding calendar
21 year on the kinds of insurance in the account bears to the net direct
22 written premiums of all member insurers for the preceding calendar
23 year on the kinds of insurance in the account. However, in addition to
24 the pro rata assessments already described, an assessment may be made
25 against each member insurer in a stated amount up to fifty dollars (\$50)
26 per year for the purpose of paying the administrative expenses of the
27 association. There shall be no assessment for any account so long as
28 assets held in such account are sufficient to cover all estimated
29 payments for liquidation in process under such account. Each member
30 insurer shall be notified of the assessment not later than thirty (30) days
31 before it is due. No member insurer may be assessed in any year on any
32 account an amount greater than one percent (1%) of that member
33 insurer's net direct written premiums in this state for the preceding
34 calendar year on the kinds of insurance in the account. If the maximum
35 assessment, together with the other assets of the association in any
36 account, does not provide in any one (1) year in any account an amount
37 sufficient to make all necessary payments from that account, the funds
38 available shall be prorated and the unpaid portion shall be paid as soon
39 thereafter as funds become available. The association may exempt or
40 defer, in whole or in part, the assessment of any member insurer, if the
41 assessment would cause the member insurer's financial statement to
42 reflect amounts of capital or surplus less than the minimum amounts

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required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders by a company whose assessment has been deferred. A deferred assessment shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies whose assessments were increased as the result of such deferment, or at the option of any such company, shall be credited to future assessments against such company.

(iv) Investigate, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insured were parties to determine the extent to which such settlements, releases, and judgments ~~may be properly contested, and as appropriate were made or obtained as a result of fraudulent or neglectful conduct of the insolvent insurer and, if so,~~ to contest them.

(v) Notify such persons as the commissioner directs under ~~IC 27-6-8-9(b)(i)~~ **section 9(b)(1) of this chapter.**

(vi) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(vii) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter. Any unreimbursed obligation of the association to a member insurer designated a servicing facility shall constitute an admitted asset of such member insurer.

(viii) Be entitled to and permitted to examine all claims, files, and records of an insolvent insurer at such times and to such extent as necessary or appropriate to obtain information regarding covered claims individually and in the aggregate, and to establish such procedures as appropriate to obtain prompt notice of all covered claims and information pertaining thereto during the course of liquidation.

(b) The association may:

(i) Appear in, defend, and appeal any action on a covered claim but it shall have no obligation to pay any amount in excess of the provisions of IC 27-6-8-7.

(ii) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

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(iii) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

(iv) Sue or be sued.

(v) Negotiate and become a party to any contracts as are necessary to carry out the purpose of this chapter.

(vi) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(vii) Refund to the then member insurers in proportion to the contribution of each such member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of the calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year, provided that the association may retain as a reserve fund from the excess of the assets over liabilities at the end of any calendar year an amount not to exceed ten percent (10%) of such excess assets of such account. Any such reserve fund or earnings from its investment shall be used only for the payment of covered claims and authorized association expenses. Upon appropriate action by the board of directors such reserve fund shall be refunded to the then member insurers in proportion to the total contribution of each such member insurer to such account.

SECTION 3. IC 27-6-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a)(i) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments thereto shall become effective upon approval in writing by the commissioner.

(ii) If the association fails to submit a suitable plan of operation by March 31, 1972, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall:

(i) Establish the procedures whereby all the powers and duties of the association under section 7 of this chapter will be performed.

(ii) Establish procedures for handling assets of the association.

(iii) Establish the amount and method of reimbursing members of

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the board of directors under section 6 of this chapter.

(iv) Establish procedures by which claims may be filed with the association by the liquidator and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of these claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(v) Establish regular places and times for meetings of the board of directors.

(vi) Establish procedures for records to be kept of financial transactions of the association, its agents, and the board of directors.

(vii) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(viii) Establish the procedures whereby **nominations for** selections for the board of directors **by the commissioner** will be submitted to the commissioner.

(ix) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under section 7(a)(iii) and 7(b)(iii) of this chapter, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

SECTION 4. IC 27-6-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) The commissioner shall **do the following:**

(i) (1) Notify the association of the existence of an insolvent insurer not later than three (3) working days after he receives an order of liquidation.

(ii) (2) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of

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each member insurer.

(3) Select the members of the board of directors under section 6 of this chapter.

(b) The commissioner may:

(i) (1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the order of liquidation and of their rights under this chapter. This notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation in all counties in which the insolvent insurer transacted insurance business shall be sufficient.

(ii) (2) Require each agent of the insolvent insurer to give prompt written notice by first class mail of such insolvency and the rights of the insured under this chapter, to each insured of the insolvent insurer for whom he is agent of record, at such insured's last known address.

(iii) (3) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(iv) (4) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(v) (5) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction.

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